

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

J. TURNER)	DOCKET NO.: PT 1997-119
Appellant,)	
)	
-vs-)	
)	
THE DEPARTMENT OF REVENUE)	FINDINGS OF FACT,
OF THE STATE OF MONTANA,)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
Respondent.)	<u>FOR JUDICIAL REVIEW</u>

The above-entitled appeal was heard on the 1st day of October, 1998 in Butte, Montana in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board).

The notice of the hearing was given as required by law.

The taxpayer, J. Turner, presented testimony in support of her appeal. The Department of Revenue (DOR), represented by appraiser Clara Winscot, presented testimony in opposition to the appeal. Testimony was presented, exhibits were received, and the Board then took the appeal under advisement.

The Board, having fully considered the testimony, exhibits, and all things and matters presented to it by all parties, finds and concludes as follows:

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FINDINGS OF FACT

1. Due, proper, and sufficient notice was given of this matter and of the time and place of the hearing. All parties were afforded the opportunity to present evidence, oral and documentary.

2. The taxpayer is the owner of the property which is the subject of this appeal and which is described as:

Lot 21, Single Tax Lode, Section 13, Township 3 North, Range 8 West, Silver Bow County, State of Montana and the improvements thereon. (Assessor Code: 1180000)

3. On October 8, 1997, the taxpayer filed an AB-26 Property Adjustment Form with the DOR, stating:

This is a very small 2 bedroom house that was on the market for sale for over a yr. at \$17,500. It did not sell. I purchased for \$7,830 plus \$3500 back taxes, fair price of \$11,500.

4. As a result of the AB-26 review, the DOR did adjust the appraisal in its decision of November 5, 1997, stating:

Adjusted appraisal to reflect physical condition of property. Adjusted to \$27,300 Market Value.

For the 1997 tax year, the DOR valued the land at \$1,025 and improvements at \$26,275.

5. On November 19, 1997, the taxpayer appealed to the Silver Bow County Tax Appeal Board seeking a value of \$1,000 for the land and \$10,500 for the improvements, stating:

I recently purchased property for \$11,500, it was

listed with a realtor for 1 yr prior for \$19,500 & did not sell. True value is \$11,500 - \$12,000. I did not know seller & I am no relation.

6. In its February 24, 1998 decision, the county board disapproved the appeal stating:

The taxpayer did not present evidence sufficient to overcome the Department of Revenue's valuation. The Department's valuation was sufficient to establish the value.

7. The taxpayer appealed the county board decision to this Board on March 25, 1998, stating:

My original reasons for appealing still apply. I don't believe the county tax appeal board has the qualification to appraise property in BSB. They don't take all the facts about a piece of property into consideration. Every piece of property is different but they lump all two bedrooms in the same area into same price range which is not right. Because this property was not a forced sale, and it was listed on market for 18 months and did not sell for asked price you can assume that the price was too high, yet it is lower than what you have appraised it at.

8. The taxpayer purchased the subject property in October of 1997 and paid the 1997 property taxes due at that time. The DOR did not dispute she was the party in interest for tax year 1997.

TAXPAYERS- CONTENTIONS

The taxpayer stated she wanted to emphasize that her purchase of the subject property was not a ~~A~~forced sale~~@~~ and, according to the seller, it had been on the market with one

realtor for six months and with another for one year at an asking price of \$17,500. It didn't sell at that price and the taxpayer testified she purchased it for \$11,500. She stated:

AJust because I paid the back taxes, I could have paid her (the seller) \$11,500 and let her pay the back taxes. I just preferred to pay the taxes and give her the difference.@ She stated she believed \$11,500 represented a fair value.

The taxpayer questioned the comparability of the houses used by the DOR to establish the value of her property. She testified the improvement is a small, two bedroom house.

with a decomposed granite foundation, as have many other houses in Butte. She stated it has Asome foundation problems.@

One room in the back, which is used a laundry room, is not level. She stated the house is on a very small lot and so has very little yard area; in fact, there is no set-back from the front sidewalk. There is a small shed in the back yard.

At the request of the Board, the taxpayer drew a simple sketch of the floor plan of her house. She indicated that, after entering the house, there are three steps up to the living room which runs across the front of the house. From the living room there is a door to stairs going down to a 6' x 6' dirt area, the location of the water heater. One small bedroom is located up two steps from the living room, and an additional front door leads from that bedroom to the front of the house

and a very small side yard. The second bedroom is off the kitchen, again up two steps. The kitchen is small, with no room for a table or a refrigerator, and the latter must be located in a small room at the rear of the house adjacent to the laundry facilities. The house is heated by two free-standing heaters.

DEPARTMENT OF REVENUE'S CONTENTIONS

The DOR submitted a copy of the Property Record Card for the subject property (DOR Ex D) together with a copy of the sales comparison document (DOR Ex E) showing the characteristics of the comparable properties used to establish the value of the subject improvements. Photographs of each of the five comparables and of the subject property were submitted at the county hearing and were made part of the record of the hearing before this Board.

The DOR testified that the taxpayer's purchase transaction was not arm's-length, as there was some duress involved due to the delinquent taxes owing; and, therefore, the purchase price of \$7,830 did not represent market value.

The DOR testified that, following the taxpayer's property adjustment request of October 18, 1997, an internal inspection of the property was made. Note was taken of the problems with the foundation and the sloping of the laundry room floor that likely was due to the floor rotting from

moisture. The condition of the property was lowered from average to fair.

DISCUSSION

From the description of the subject improvement and the comparison of the subject to those comparables selected by the DOR to value the subject property, it is apparent the comparable selection is not good. The subject property is inferior. All of the comparables have set-backs from the street, all but one have superior siding, all are situated on larger lots (only one less than the standard size of 30' x 100'), and three of the five have garages. All the foregoing would be desirability factors to a prospective purchaser. In addition, it is apparent from the testimony of the taxpayer that the utility of the subject improvement is compromised by the design of the structure. For example, the numerous levels detract from the utility, as do the two free-standing heaters as the sole source of heat for the building, and a kitchen too small to contain a dining area or a refrigerator.

The subject property is inferior to the comparables selected in both desirability and utility; and, therefore, the Condition, Desirability, Utility (CDU) factor should be adjused, lowered from ~~A~~fair@ to ~~A~~poor,@ and a value determined after new comparables have been selected that are more reflective of the value of the subject property.

Based on testimony and evidence presented, this appeal shall be granted in part and denied in part, and the decision of the Silver Bow County Tax Appeal Board will be modified.

CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. ' 15-2-302 Montana Code Annotated

2. **15-8-111. Assessment -- market value standard -- exceptions.** (1)

All taxable property must be assessed at 100% of its market value except as otherwise provided. (Montana Code Annotated)

3. It is true, as a general rule, that the appraisal of the Department of Revenue is presumed to be correct and that the taxpayer must overcome this presumption. The Department of Revenue, however, should bear a certain burden of providing documented evidence to support its assessed values. (Western Airlines, Inc., v. Catherine Michunovich et al., 149 Mont. 347, 428 P.2d 3,[1967])).

ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Silver Bow County by the assessor of that county at a 1997 tax year value of \$1,025 for the land and an improvement value to be determined by the Department of Revenue after the CDU rating has been reduced from Fair to Poor and the property has been remarketed.

Dated this 1st day of December, 1998.

BY ORDER OF THE
STATE TAX APPEAL BOARD

PATRICK E. McKELVEY, Chairman

(S E A L)

GREGORY A. THORNQUIST, Member

LINDA L. VAUGHEY, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.